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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 427

C. R. BARNES, ET AL.,

Petitioners,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ALEX ELSON,
11 South LaSalle Street,
Chicago 3, Illinois,
LESTER P. SCHOENE,
MILTON KRAMER,
1625—K Street, N. W.,
Washington 6, D. C.,
CLARENCE M. MULHOLLAND,
EDWARD J. HICKEY, JR.,
620 Tower Building,
Washington 5, D. C.,
Attorneys for Petitioners.

Of Counsel:
SCHOENE and KRAMER,
1625—K Street, N. W.,
Washington 6, D. C.,
MULHOLLAND, ROBIE & HICKEY,
620 Tower Building,
Washington 5, D. C.

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Now come C. R. Barnes, et al., Defendants-Appellees below by their duly authorized attorneys, and pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered by a divided Court on August 10, 1954.

In support of this petition, your petitioners respectfully show:

OPINIONS BELOW.

The opinion of the District Court is not reported. It is set forth in the record (R. 61).

The opinions of the Court of Appeals printed in Appendix B hereto, *infra*, p. 24, are reported in 215 F. 2d 423.

JURISDICTION.

The judgment of the Court of Appeals was entered on August 10, 1954, Appendix B hereto, *infra*, p. 23.

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

QUESTIONS PRESENTED.

1. In the absence of any penalty or the accrual of any liability or a showing of any present danger to existing legal rights for failure to bargain concerning a health and welfare plan and free transportation, does an action by railroads against representatives of unions, seeking a declaratory judgment that the railroads are not required under the Railway Labor Act to bargain on such subjects, present a "case or controversy" under the Constitution?

2. If the answer to question 1 is in the affirmative, would such declaratory judgment meet the additional constitutional requirement of a "case or controversy" that the judgment must conclusively resolve the dispute?

3. Assuming a "case or controversy" to exist, whether under prior decisions of this Court the District Court had jurisdiction of the subject matter.

4. Whether the declaratory relief sought by the complaint would prematurely preempt and prejudge a dispute committed by Congress for resolution under the procedures of the Railway Labor Act.

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CONSTITUTIONAL PROVISION AND STATUTES INVOLVED.

1. Article III, Section 2, of the Constitution of the United States provides:

> "Jurisdiction of Courts. The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, * * *"

2. The Federal Declaratory Judgment Act (28 U. S. C. A., Sec. 2201) provides:

> "In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." June 25, 1948, c. 646, 62 Stat. 964, amended May 24, 1949, c. 139, Sec. 111, 63 Stat 105.

3. The Railway Labor Act, as amended, 45 U. S. C. 151, *et seq.* The relevant portions of the Act are appended to this petition as Appendix A.

STATEMENT OF THE CASE.

Plaintiffs, 201 railroad companies, including all the principal railroads of the United States, by their amended complaint, seek a declaratory judgment against defendants, officers of the fifteen unions which represent approximately one million of their non-operating employees, that the Railway Labor Act does not require plaintiffs to bargain as to certain proposals submitted by defendants. The District Court dismissed the amended complaint on defendants' motion because it did not present a justiciable controversy. The Court of Appeals, Circuit Judge Schnackenberg dissenting, reversed the District Court and held

that the amended complaint sets forth a justiciable controversy.

The complaint alleges that the action arises under and involves the interpretation of the Railway Labor Act, as amended. Jurisdiction of the Court is predicated on Section 1337 of Title 28 of the United States Code (R. 15).

In accordance with the practice followed for more than 20 years under the Railway Labor Act, the unions commenced collective bargaining on May 22, 1953 by notices in the form of letters addressed to the carriers informing them, pursuant to Section 6 of the Railway Labor Act, of desired changes in existing agreements (R. 20, 36). The proposals included establishment of an insurance and welfare plan and free transportation.

Upon failure of the unions and the individual carriers to reach agreement the Employes' National Conference Committee, representing the unions, and three Carriers' Conference Committees, representing the railroads, met on November 3, 1953. At that meeting the carriers informed the unions in writing that they would bargain with respect to certain proposals but would not bargain with respect to a health and welfare plan or rights to free transportation on the ground that these proposals do not involve or affect the rates of pay, rules or working conditions on the railroads and therefore were not proper subjects for the collective bargaining required by the Railway Labor Act (R. 23).

On November 4, 1953, the meeting between the parties was resumed (R. 56), and on the same day this action was filed in the District Court (R. 2). The Employes' National Conference Committee declined to negotiate with plaintiffs on a basis excluding from consideration the two proposals in question, and the carrier representatives refused to negotiate on any other basis (R. 56). The meeting thereupon was terminated.

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The National Mediation Board endeavored but failed to resolve the controversy (R. 56-57). On December 28, 1953, almost two months after the commencement of this action, the President of the United States, pursuant to the authority granted to him by Section 10 of the Railway Labor Act, created an Emergency Board to investigate and report to him with respect to the dispute (R. 57). The complaint, as amended, further alleges that the defendants have announced that they have circulated ballots to the employees whom they represent to vote upon a proposal to call a strike or strikes with respect to all their proposals (R. 57).

The complaint, as amended, alleges that a continuance of the amicable relationship of the plaintiffs and the said employees and the continuance of transportation service to the public is threatened with impairment; that the bargaining procedure established by the Act is being interfered with and thwarted by the defendants and the employees whom they represent; that plaintiffs' public relations are threatened through the wrongful insistence and announcement of defendants that plaintiffs have violated their duty under the Act; and that a substantial portion of the public may cease dealing with plaintiffs, and prospective employees may seek work elsewhere (R. 57, 58).

Plaintiffs' prayer is that the court adjudge, declare and decree (a) that the objected to proposals do not affect or concern rates of pay, rules, or working conditions within the meaning of the Act; (b) that they are not a proper subject matter for collective bargaining required of plaintiffs under the Act; (c) that plaintiffs are subject to no legal obligation under the Act or otherwise to bargain with defendants as to said proposals; and (d) general relief (R. 24).

On May 15, 1954, subsequent to the decision of the District Court, the Emergency Board appointed by the Presi-

dent issued its report and recommendations for resolving the dispute, including recommendations concerning the proposals for a health and welfare plan and free transportation. (Report to the President by Emergency Board No. 106, N. M. B. Case No. A-4336, U. S. Government Printing Office, Washington, D. C., May 15, 1954.) The Board had prior to its report held hearings for a total of eight weeks during the period January 19—April 3, 1954. (Report of Emergency Board, p. 1.) Much of the evidence presented by the parties related to the proposals for a health and welfare plan and free transportation. The Court should be advised that subsequent to the publication of the Report of the Emergency Board and to the judgment of the Court of Appeals, the conference committees representing the parties resumed negotiations culminating in an agreement on August 21, 1954 between 189 of the 201 plaintiffs and the unions, which agreement included provisions relating to a health and welfare plan and disposed of the dispute regarding free transportation. By reason of the agreement the issue presented by the complaint may be moot as to all of the plaintiffs except the following:

Atlantic Coast Line.
Atlanta and West Point.
Western Railroad of Alabama.
Atlanta Joint Terminals.
Central of Georgia.
Charleston and Western Carolina.
Clinchfield.
Georgia, Augusta Union Station Co.
Gulf, Mobile & Ohio.
Louisville & Nashville.
Nashville, Chattanooga & St. Louis.
Richmond, Fredericksburg & Potomac.

REASONS FOR GRANTING THE WRIT.

I. The Decision Below Decides an Issue of Federal Jurisdiction of Exceptional Importance in Direct Conflict With Numerous Decisions of This Court Which Specify the Nature of the Present or Threatened Injury Essential to a "Case or Controversy".

The majority opinion below makes no reference whatsoever to *Public Service Commission* v. *Wycoff*, 344 U. S. 237 and *International Union* v. *Boyd*, 347 U. S. 222, the two most recent decisions of this Court on the subject. Both cases were cited frequently and discussed extensively in the briefs filed by both parties below and were also discussed by counsel and by the Court during oral argument.

This Court, in establishing the constitutionality of the Federal Declaratory Judgment Act of 1934, emphasized that it was doing so only by interpreting the statute to confine the declaratory remedy within conventional constitutional "case or controversy" limits. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 325; *Aetna Life Insurance Company* v. *Haworth*, 300 U. S. 227, 239, 240. See also *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461. This limitation has been consistently followed by this Court in a long line of cases and was recently emphasized in the two cases cited above.

The primary test of "case or controversy" is a showing of present or imminently threatened invasion of existing legal rights. "Claims based merely upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention." *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324-5; *Coffman* v. *Breeze Corp.*, 323 U. S. 316; *Eccles* v. *Peoples Bank*, 333 U. S. 426; *Public Service Commission* v. *Wycoff*, 344 U. S. 247; *Public Utilities Com-*

mission of California v. *United Air Lines, Inc.*, 346 U. S. 402; *International Union* v. *Boyd*, 347 U. S. 222.

In the *Wycoff* case, this Court held that a complaint for a declaratory judgment that the plaintiff's operations were not subject to regulation by the State Commission, as the Commission had asserted, because the operations were in interstate commerce, did not present a case or controversy. In that case it was alleged that the Commission had already undertaken to regulate the plaintiff, yet this Court found no present or imminently threatened injury within the requirement of "case or controversy." In the instant case, no proceeding of any kind by anybody has been commenced or even threatened. The only "danger" present in the instant case is that some time in the future such a proceeding may be undertaken and that such proceeding, if determined adversely to plaintiffs, may have an adverse effect on plaintiffs. In any such proceeding, plaintiffs could assert as a defense every contention they are making here, and if those contentions are found meritorious they would be as fully protected by the judgment there as they can be by any declaratory judgment here. As to 189 of the 201 plaintiffs, we already know that no such proceeding will ever be undertaken. To be sure, we disagree with all 201 plaintiffs concerning their obligation to bargain on the disputed proposals. But our disagreement with the 189 who have signed collective contracts since the commencement of this action is no different than our disagreement with the remaining 12 and has no greater impact on their legal rights.

The language of this Court in the *Wycoff* case is peculiarly apt here. In that case this Court pointed out "respondent here has sought to ward off possible action of the petitioner by seeking a declaratory judgment to the effect that he will have a good defense when and if that cause of action is asserted." (344 U. S. 237, 248.) That is precisely the situation in the instant case. This is ap-

parent from an examination of the legal rights plaintiffs seek to protect in this action. The parties sat down to bargain concerning the proposed changes in their bargaining agreements, and the carriers took the position that they would not bargain on two of them on the ground that they were not required to do so under the Railway Labor Act. They then filed this action for a declaration that they were correct in such construction of the Act. At such point, what legal right of plaintiffs is invaded or put in jeopardy? They do not assert a right to have defendants refrain from advancing the disputed proposals. They do not contend that negotiation on such proposals would violate the Act nor that defendants may not make such proposals independently of whatever rights defendants may have under the Act. It is thus plain that what plaintiffs really seek is the advice of the courts in advance of any proceeding brought to compel them to bargain, that they are within their legal rights in refusing to do so and therefore would have a good defense to any such proceeding. In the absence of any proceeding to compel bargaining, there are no penalties or liabilities that can accrue to the plaintiffs under the Railway Labor Act.

Contrast the relative certainty and imminence of injury in the *Boyd* case with that in the present case. There the workers regularly went to Alaska to work and intended to go the coming summer, and the Immigration Director had categorically stated that on their return he would subject them to the procedures of the new legislation. In fact, as pointed out in the dissenting opinion in the *Boyd* case (347 U. S. 222, 226), the injury which the Court found too speculative to support a declaratory judgment action had in fact happened at the time this Court was considering the case. Conversely, in the present case the "sanctions" of the Railway Labor Act, through the institution of a suit by defendants to compel plaintiffs to bargain,

have not only "not been set in motion" but, unlike the situation in the *Boyd* case, defendants have announced no intention to bring such a suit.

The only allegation of injury to plaintiffs set forth in the original complaint is that "the continuance of the amicable relationship of the plaintiffs and the said employees * * * is threatened with impairment." This is clearly frivolous. Not only is such a result highly speculative, but harmonious relations are hardly subject to perpetuation by judicial decree.

After the motion to dismiss had been filed in the District Court, and after both parties had filed their briefs, plaintiffs amended their complaint in a desperate effort to allege less nebulous injury (R. 57-8). If anything, the additional allegations are even more speculative than the original. They allege fear of harm from strikes that may be undertaken by defendants. To be sure, such strikes may be undertaken. But they also may not. And in any event, plaintiffs do not urge that such action by defendants would constitute an invasion of their legal rights, for a strike is not forbidden at this point either by the Railway Labor Act or by any other law.

Other allegations of injury are to the effect that plaintiffs' public relations may suffer, that prospective customers and employees may shun them as a result of their disagreement with defendants, and that the bargaining procedures of the Railway Labor Act are being thwarted by the defendants. But as the Report of the Emergency Board indicates, both sides to this action, while it was pending, took an active part in presenting their position and the facts in support of the disputed proposals before the Board. And the Board was thereby enabled to make a report, as contemplated by the Railway Labor Act. Moreover, following the report the parties resumed the negotiations and agreements were made with 189 of the 201

plaintiffs. This hardly fits the description of the Court below of a "complete refusal to negotiate" or a "breakdown of the procedure created by Congress". (Majority Opinion *infra*, p. 31.) Indeed, insofar as there has been anything approaching a breakdown of the procedure created by Congress, it resulted from the institution of this action.

In brief, the only invasion of a legal right that plaintiffs can conceivably urge is an invasion of their right not to bargain concerning the disputed proposals. If the plaintiffs do not wish to bargain with defendants on such proposals,—or on any other proposals,—they can simply refuse to do so, and no injury or impairment of their legal rights can result. There are no penalties or sanctions in the Railway Labor Act for such a refusal.

Apart from the serious consequences in this case of the failure of the Court below to follow the principles established by this Court, which we will discuss later, the lower Court's decision, unless reviewed by this Court, would establish a precedent for overreaching the constitutional function of the federal courts. The decision below would justify the use of the declaratory remedy in many other situations which, like the instant case, fail to meet the criteria of justiciability established by this Court.

II. The Decision Below Is in Direct Conflict With This Court's Decisions in Ignoring the Essential Requirement of a "Case or Controversy" That the Relief That May Be Granted Must Conclusively Resolve the Dispute.

The majority opinion does not discuss or consider one of the prime requisites of a "case or controversy", that the declaratory judgment must conclusively resolve the dispute.

This requirement was emphatically restated by this Court in *Aetna Life Insurance Co.* v. *Haworth*, 300 U. S. 227, where this Court held that in order for a dispute to constitute a case or controversy it must be one "admitting of specific relief through a decree of a conclusive character". In *Public Service Commission* v. *Wycoff*, 344 U. S. 237, this Court, quoting from a report of the Senate Judiciary Committee concerning decisions on declaratory judgments, stated that "the decision must finally settle and determine the controversy."

Such requirement is impossible of satisfaction in the instant case. The most that could be determined by a declaratory judgment here is that plaintiffs are not required under the Railway Labor Act to bargain concerning the disputed proposals. But the powers of the parties to bargain are not limited by the Railway Labor Act. Obviously, the Railway Labor Act did not create the right or the power to bargain. The parties to this action bargained for decades before there was a Railway Labor Act. As pointed out in *General Committee* v. *MKT R. Co.*, 320 U. S. 323, the Railway Labor Act was designed to encourage and further the collective bargaining process and to assist it through the instruments of mediation, conciliation and arbitration. As stated in that case, "Those instruments, in addition to the available economic weapons, remain unchanged in large areas of this railway labor field." (320 U. S. 323, 333). There is nothing in the Act that limits the pre-existing right and power of the parties to bargain; there is nothing in the Act that prohibits the parties from bargaining about anything. Thus a declaration that plaintiffs are not required by the Act to bargain about the disputed proposals solves nothing. Employees are concerned with obtaining a health and welfare plan and transportation privileges. The relief sought would certainly not resolve this dispute. It could only intensify the real dis-

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pute by removing the very machinery provided by Congress for settling such matters.

III. The Decision Below Ignores the Clear Pronouncements of This Court That the Federal Courts Are Without Jurisdiction of the Subject Matter of This Dispute.

It has been clear, at least since the decisions of this Court in *General Committee* v. *MKT R. Co.*, 320 U. S. 323; *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338; and *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, that in the field of labor disputes in the railroad industry the Courts are without jurisdiction of the disputes except those specifically vested in the courts by the Railway Labor Act, and that except for the administrative and judicial remedies specifically provided by the Act for the adjustment of controversies, there were to be no remedies. As this Court said in the *Switchmen's Union* case (at p. 302) "Congress intended to go no further in the use of the processes of adjudication and litigation than the express provisions of the Act indicate."

In *General Committee* v. *MKT R. Co.*, 320 U. S. 323, this Court granted certiorari because of the importance of the problems raised by courts interfering in railroad labor disputes. (320 U. S. 323, 327.) After reviewing the history of railway labor legislation, this Court discussed the availability of judicial remedies in this field and said:

> "* * * the conclusion is irresistible that Congress carved out of the field of conciliation, mediation and arbitration only the select list of problems which it was ready to place in the adjudicatory channel. All else it left to those voluntary processes whose use Congress had long encouraged to protect these arteries of interstate commerce from industrial strife. The concept of mediation is the antithesis of justiciability.
>
> "In view of the pattern of this legislation and its

history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforcible in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals. *There may be as a result many areas in this field where neither the administrative nor the judicial function can be utilized. But that is only to be expected where Congress still places such great reliance on the voluntary process of conciliation, mediation and arbitration.* See H. Rep. No. 1944, 73d Cong., 2d Sess., p. 2. Courts should not rush in where Congress has not chosen to tread." (Italics supplied.)

The disputes in the above cases were quite similar to the disagreement in this case. For example, in *General Committee* v. *MKT R. Co.*, the specific question was the validity of an agreement made by the firemen's union concerning emergency assignments of engineers; the engineers' union sought a declaratory judgment that the firemens' union and the carrier could not under the Railway Labor Act legally make such an agreement, as they had done. In the instant case, the question posed is whether the unions have the right under the Railway Labor Act to require the carriers to bargain for a health and welfare plan and free transportation. In the *General Committee* case, a declaration that the contract could not legally be entered into would have been determinative of the rights of the parties, yet this Court held that the federal courts were foreclosed from making such determinations. In this case, as we have previously pointed out, a decree would not conclusively resolve the dispute. It is foolhardy to suppose that Congress intended to foreclose the federal courts from making determinations in this field that would effectively establish legal rights, but did not intend to foreclose them from making determinations that would be ineffectual.

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IV. The Decision Below Presents Issues of Paramount Public Importance Affecting Industrial Peace in the Railroad Industry and Should Be Decided by This Court. In Particular, the Decision Below Nullifies Administrative Procedures Provided by Congress for Resolving Disputes.

The majority of the Court below failed to recognize the serious practical consequences of this first attempt in the history of the Railway Labor Act to use the declaratory judgment remedy to forestall collective bargaining. If the decision of the lower court is permitted to stand, collective bargaining in the railway industry will be seriously jeopardized. Proposals made by unions which are not identified as wage increases or hours changes will be challenged by the railroads in the courts as falling outside the scope of the Railway Labor Act and months of delay will ensue. The courts will be inundated with unnecessary, troublesome litigation and labor relations within the industry will be set back many decades. In this very case a dispute which has been settled with the great bulk of the railroads could not be disposed of with the remaining few carriers without extensive, time consuming and costly litigation.

The central and guiding principle which Congress followed in formulating the Railway Labor Act is that voluntary agreements reached at the bargaining table are far superior to agreements induced by governmental action or court determination, and that disputes of the type here involved should be resolved through voluntary procedures rather than visited upon the courts. Voluntary processes of the Railway Labor Act are designed to insure complete and exhaustive use of the collective bargaining processes. (Section 2, First and Second, 45 U. S. C. A. 152 First and Second.) That Congress evidenced its intention to provide a resolution of all disputes through the processes of the

Act is manifest in Section 5 First which provides that either party to a dispute may invoke the services of the Mediation Board not only in "(a) A dispute concerning changes in rates of pay, rules or working conditions not adjusted by the parties in conference" but also in: "(b) *any other dispute* not referable to the National Railroad Adjustment Board and not adjusted between the parties or where *conferences are refused.*" (Italics supplied.) Methods of securing and encouraging arbitration are set forth in Section 5 First and Section 7. The President may under Section 10 appoint an Emergency Board.

It is inescapably clear from these provisions that Congress intended the administrative machinery of the Railway Labor Act to provide means of resolving not only those disputes which concerned rates of pay, rules and working conditions but "any other disputes which cannot be adjusted by the parties." Accordingly, even if we accept *arguendo* plaintiffs' contention in the pending action that the terminology "rates of pay, rules or working conditions" does not include or comprehend disputes involving health and welfare plans and rights to free transportation, the dispute is nevertheless one which Congress by the Railway Labor Act has deliberately subjected to the processes of conciliation, mediation, arbitration and fact finding and has precluded from judicial determination. *General Committee* v. *MKT R. Co.*, 320 U. S. 323 at 332, 333.

The efficacy of the Railway Labor Act to achieve the purposes of Congress is plainly shown by the fact that after the District Court dismissed the action and while appeal was pending the parties resumed negotiations on the basis of the recommendations of the Emergency Board, and agreement was reached between the defendants and 189 of the 201 plaintiffs. It is no answer to say, as the lower court does, that the interpretation of statutes is a matter for the courts. We concede that the construction of a fed-

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eral statute is the business of the court in a case properly before a court, but we also submit that when a statute clearly on its face provides resort to the processes of conciliation, mediation, arbitration and fact finding, those procedures may not be preempted by declaratory judgments in the court. Especially is this so if in the course of such procedures the dispute may well be terminated in any one of several ways without necessity of court determination of the action. "Responsibility for effective functioning of the administrative process cannot be thus transferred from the bodies in which Congress has placed it to the courts." *Pub. Serv. Comm.* v. *Wycoff*, 344 U. S. 237, 247.

CONCLUSION.

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

ALEX ELSON,
11 South LaSalle Street,
Chicago 3, Illinois,

LESTER P. SCHOENE,
MILTON KRAMER,
1625—K Street, N. W.,
Washington 6, D. C.,

CLARENCE M. MULHOLLAND,
EDWARD J. HICKEY, JR.,
620 Tower Building,
Washington 5, D. C.,
Attorneys for Petitioners.

Of Counsel:
SCHOENE and KRAMER,
1625—K Street, N. W.,
Washington 6, D. C.,

MULHOLLAND, ROBIE & HICKEY,
620 Tower Building,
Washington 5, D. C.

APPENDIX A.

Railway Labor Act (Pub. No. 257, 69th Cong., appd. May 20, 1926, 44 Stat. 577, as amended by Pub. No. 442, 73rd Cong. appd. June 21, 1934, 48 Stat. 926), 45 U.S.C., ch. 8; U.S.C.A., Title 45, secs. 151 *et seq.*

Title.

Being An Act To provide for the prompt disposition of disputes between carriers and their employees and for other purposes.

Section 2, General Purposes:

"* * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; * * *"

Section 2, First:

"It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 2, Second:

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute. * * *"

Section 2, Sixth:

"In case of a dispute between a carrier or carriers

and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties. * * *"

Section 2, Seventh:

"No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act. * * *"

Section 2, Tenth:

"The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh or eighth paragraph of this section shall be a misdemeanor, and upon * * *."

Section 5, First:

"The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose. * * *"

Section 7, First:

"Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed

upon such party by the terms of this Act or otherwise. * * *"

Section 10:

"If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation. * * *

"After the creation of such board, and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."

APPENDIX B.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois

Tuesday, August 10, 1954.

Before:

Hon. Walter C. Lindley, Circuit Judge.
Hon. H. Nathan Swaim, Circuit Judge.
Hon. Elmer J. Schnackenberg, Circuit Judge.

Nos. 11116, 11161.
THE AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, ET AL.,
Plaintiffs-Appellants,
vs.
C. R. BARNES, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgments of the said District Court in this cause appealed from be, and the same are hereby, REVERSED, with costs.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

Nos. 11116 and 11161. October Term, 1953, April Session, 1954.

THE AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, ET AL., *Plaintiffs-Appellants*,

vs.

C. R. BARNES, ET AL., *Defendants-Appellees.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

August 10, 1954.

Before LINDLEY, SWAIM, and SCHNACKENBERG, *Circuit Judges.*

LINDLEY, *Circuit Judge.* Plaintiffs, constituting the principal railroads of the United States, sued in the District Court for a declaratory judgment as to their statutory duty as interstate carriers to bargain upon two specific proposals submitted by defendants, bargaining agents for plaintiffs' employees, under the pertinent provisions of the Railway Labor Act 45 U.S.C. Sec. 151 *et sequi.* The District Court dismissed the amended complaint because it believed that the facts presented did not present a justiciable controversy. The only issue before us on appeal is whether this determination was correct.

Accepting the averments of the complaint as true, as the court was bound to do, they reveal that defendants submitted certain written proposals to plaintiffs in negotiation of new union contracts. These included establishment of an insurance and welfare plan and free transportation for the affected employees and their families. Plaintiffs took the position that this subject matter did not affect "rates of pay, rules, and working conditions" as defined

in the Railway Labor Act, 45 U.S.C. Sec. 151 (a) and refused to bargain with reference thereto. Defendants, on the other hand, refused to bargain on any other proposals, unless these two were included. Thus the parties reached a stalemate and negotiations ended.

The dispute was referred to the National Mediation Board, which exhausted its statutory function without resolution of the controversy and terminated its services. Defendants then circulated a strike ballot among the employees, the results of which are not known. On December 28, 1953, the President created an Emergency Board to investigate and report to him with respect to the controversy. On May 15, 1954, the Board issued its report in which it held "that the questions as to whether the demands of the labor organizations for a health and welfare plan and for free transportation come within the language of the Railway Labor Act are 'questions which the Board does not feel it should attempt to answer. They are questions involving statutory construction and for the courts to determine.' "

The amended complaint averred further that "The conference, negotiation and bargaining procedure established by Congress in the Railway Labor Act with respect to the making and maintaining of agreements concerning rates of pay, rules and working conditions has been and is being interfered with and thwarted by the wrongful action of the organizations * * * and of the employees whom they represent in insisting that the 'free transportation' and 'health and welfare' proposals are properly negotiable under the Railway Labor Act and in refusing to bargain and negotiate with respect to the plaintiffs' proposals and the other proposals set out in the May 22, 1953 notice unless plaintiffs agree to bargain and negotiate upon the 'free transportation' and 'health and welfare' proposals, all to the injury and detriment both of the plaintiffs and of the public. In addition to the injury through such interference with the statutory bargaining process, plaintiffs' public relations are threatened through the wrongful insistence and announcement of the said organizations that plaintiffs have violated and are violating their duty under the Railway Labor Act; a substantial portion of the public

may cease dealing with plaintiffs and prospective employees may seek work elsewhere. The economic harm to plaintiffs, to the public and to other employees of plaintiffs which is threatened by way of strikes is predicated on the wrongful insistence of the said organizations and the employees whom they represent upon bargaining and negotiation with respect to the 'free transportation' and 'health and welfare' proposals and upon their refusal to bargain and negotiate as to their other May 22, 1953 proposals and the proposals of plaintiffs unless plaintiffs agree to bargain and negotiate as to those 'free transportation' and 'health and welfare' proposals."

Plaintiffs prayed that the court "declare and decree (a) that the said proposals to amend the existing agreements between the individual plaintiffs and their employees represented by the organizations named in Paragraph 5 of this Complaint so as to provide as set forth under the captions 'Health and Welfare Plan,' 'Rights to Free Transportation' and 'Rules Applicable to Both Home Road and Foreign Road Transportation' do not affect or concern 'rates of pay, rules, or working conditions' within the meaning of those terms in the Railway Labor Act; (b) that the said proposals are not proper subject matter for the collective bargaining required of plaintiffs by the Railway Labor Act; (c) that the plaintiffs are subject to no legal obligation or duty under the terms of the Railway Labor Act or otherwise to confer, treat, bargain or negotiate with their employees or the representatives of their employees as to the subject matter of the said proposals; and (d) that the plaintiffs have such other and further relief as may be just in the circumstances of this case."

If plaintiffs are to prevail, a substantial controversy affecting present legal interests of the parties must be found to exist on the basis of this factual statement. Those interests must be determined in the light of the Act, the purposes of which pertinent to this inquiry are defined in Section 2, 45 U.S.C. Sec. 151a, as follows: "(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; * * *." Section 2, First, imposes the duty on all carriers to "exert every reasonable effort" to make agreements respecting

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rates of pay, rules and working conditions, "and to settle all disputes, whether arising out of the application of such agreements or otherwise" in order to prevent interruptions of commerce. 45 U.S.C. Sec. 152 First. Section 2 Sixth prescribes the procedure for convening conferences "in case of a dispute * * * arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." 45 U.S.C. Sec. 152 Sixth. Either party to a dispute may invoke the services of the National Mediation Board in cases of "(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference," and "(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused." 45 U.S.C. Sec. 155 First.

Plaintiffs contend on appeal that the Act imposes on them a duty to treat with employee representatives only with respect to "rates of pay, rules, or working conditions;" that these terms do not include the health and welfare and free transportation proposals; and that the dispute between the parties and the stalemate on the interpretation of plaintiffs' duty under the Act presents a justiciable controversy.

The purpose of the Declaratory Judgment Act, 28 U.S.C. Sec. 2201, is to remove uncertainty from legal relations and clarify, quiet and stabilize them before irretrievable acts have been undertaken; *Delaney* v. *Carter Oil Co.*, 174 F. 2d 314 (CA-10), cert. denied, *Dille* v. *Delaney*, 338 U.S. 824; to avoid multiplicity of suits; *Crosley Corp.* v. *Hazeltine Corp.*, 122 F. 2d 925 (CA-3), cert. denied 315 U.S. 813; and to provide a remedy to a suitor, who otherwise can not have his question adjudicated until his adversary takes the initiative. *Employers' Liability Assur. Corp.* v. *Ryan*, 109 F. 2d 690 (CA-6), cert. dismissed 311 U.S. 722. The courts quite generally agree that it was the intent of Congress to afford means for settlement of relief for uncertainties respecting legal rights whether before or after a stage of coercion has been reached. See *Sunshine Mining Co.* v. *Carver*, 41 F. Supp. 60; *Hann* v. *Venetian Blind Corp.*, 15 F. Supp. 372, Aff'd 111 F. 2d 455 (CA-9).

Thus, in the *Sunshine* case, the District Court took jurisdiction where a mining company brought suit against labor unions for a declaration that plaintiff was not engaged in interstate commerce. A civil service employee may have a declaratory judgment as to whether the statute justifies his threatened discharge. *United Public Workers of America* v. *Mitchell*, 330 U.S. 75. In *American Federation of Labor* v. *W.U. Tel. Co.*, 179 F. 2d 535 (CA-6), the court held that the District Court had jurisdiction of an action by a labor union for a declaratory judgment as to the interpretation of an existing contract, while in *Bowie* v. *Gonzales*, 117 F. 2d 11 (CA-1), the decision was that the District Court had jurisdiction of an action for declaratory judgment to the effect that Congress intended to exempt certain employees from the provisions of the Fair Labor Standards Act and that, because of the conflicting contentions concerning the applicability of the Act to certain employees, a justiciable controversy existed. In *Oil Workers International Union, Local No. 463, et al.* v. *Texoma Natural Gas Co.*, 146 F. 2d 62 (CA-5), cert. denied 324 U.S. 872, a controversy arose with respect to the rights of the parties under a labor contract. An action was brought to determine the seniority status of certain employees and to determine what the rights of the parties were under the correct interpretation of the contract. The court said, at 65: "The court below found that the controversy between the parties related to their legal rights and liabilities under their contract; that the parties had taken adverse positions with respect to their respective rights and obligations; that, therefore, a justiciable controversy existed, appropriate for judicial determination under the Declaratory Judgment Act. We agree. An employer may establish the seniority rights of an employee in dispute with other employees, as well as general rights which their contract relationship establishes, without waiting to be sued for breach or for damages or for specific performance, and thus secure an 'interpretation of the contract during its actual operation' and stabilize an 'uncertain and disputed relation.' Exhaustion of the administrative remedies granted by the War Labor Disputes Act, 50 U.S.C.A. Appendix Sec. 1501 *et seq.*, and Executive Order No. 9017, of January 12, 1942, 50 U.S.C.A. Appendix Sec. 1507 note,

to employer and employee is not a prerequisite to the bringing of a court action by either party for an alleged violation by the other of a labor agreement." "The statute * * * should be liberally construed to accomplish the purpose intended, *i.e.*, to afford a speedy and inexpensive method of adjudicating legal disputes without invoking the coercive remedies of the old procedure, and to settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights or a disturbance of the relationships." *Aetna Casualty & Surety Co.* v. *Quarles*, 92 F. 2d 321, 325 (CA-4). In *E. Edelmann & Co.* v. *Triple-A Specialty Co.*, 88 F. 2d 852, 854, cert. denied 300 U.S. 680, we said: "It was the congressional intent to avoid accrual of avoidable damages to one not certain of his rights and to afford him an early adjudication without waiting until his adversary should see fit to begin suit, after damage had accrued."

The Supreme Court has said, in *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227, 240-241: "The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interest. *South Spring Gold Co.* v. *Amador Gold Co.*, 145 U.S. 300, 301; *Fairchild* v. *Hughes*, 258 U.S. 126, 129; *Massachusetts* v. *Mellon*, 262 U.S. 447, 487, 488. * * * Where there is such a concrete case admitting of an immediate and definite determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. *Nashville, C. & St. L. Ry. Co.* v. *Wallace, supra*, p. 263; *Tutun* v. *United States*, 270 U.S. 568, 576, 577; *Fidelity National Bank* v. *Swope*, 274 U.S. 123, 132; *Old Colony Trust Co.* v. *Commissioner, supra*, p. 725. And, as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required. *Nashville C. & St. L. Ry. Co.* v. *Wallace, supra*, p. 264."

Borchard, in his "Declaratory Judgments," 2d Ed. 58, points out that: "Perhaps the principal contribution that the declaratory judgment has made to the philosophy of procedure is to make it clear that a controversy as to legal

rights is as fully determinable before as it is after one or the other party has acted in his own view of his rights and perhaps irretrievably shattered the *status quo.*"

We think we may safely apply the language of the Supreme Court in the *Aetna* case to the facts presented here by way of paraphase as follows: There is here, as between the parties who face each other in adversary pleading, a dispute relating to their legal rights and obligations arising under the United States statutes. This controversy is definite and concrete, not hypothetical or abstract, for, prior to the suit, the parties have taken adverse positions with respect to their existing obligations, including specifically the question of whether the two proposals insisted upon by the defendants are within the statute governing the parties' duty to negotiate. On the one side the employers claimed that there was no obligation on their part to bargain on the proposals. On the other side, the employees insisted that it was the employers' duty to negotiate with reference thereto and, in view of the railroads' refusal to bargain upon the two proposals, refused to negotiate upon any other matter, withdrew from conference and initiated a vote upon whether a strike would be called. The controversy was as to the present specific rights and duties of the respective parties. Such a dispute is manifestly susceptible of judicial determination. It does not call for an advisory opinion upon a hypothetical basis but seeks an adjudication of the present respective rights and duties of the parties under the statute. This, we think, is a fair paraphrase of the language of the Supreme Court applicable to the present case, as it appears on page 242 of the Official Reports.

We must bear in mind that the Railway Labor Act provides for compulsory bargaining on the subjects described in the Act, and creates legal rights and obligations in that respect. The report of the Advisory Board to the president concluded that whether the proposals in question come within the Act was not for the Board but for the courts. It seems to us that there could be no clearer case of an actual ripened legal controversy between the parties as to their respective statutory rights and obligations. Because the parties could not settle that controversy, negotiations

were broken off and the purpose of the Railway Labor Act defeated, for, instead of industrial peace and amicable negotiations, there ensued a complete refusal to negotiate, a breakdown of the procedure created by Congress, and a threat of a nationwide strike. In the absence of relief by way of a declaratory judgment, the parties are left to their ordinary remedies. Suit after suit may be instituted. The employees themselves might have demanded from the court a mandate for negotiations (*Virginian R. Co.* v. *System Federation No. 40*, 300 U.S. 515), but instead of doing so, thus promoting industrial peace, they withdrew on the ground that the railroads were wrongfully refusing to bargain as to the two proposals and disorder, discord and injury were threatened. It was to meet just such disturbing situations, we think that Congress authorized declaratory action before injury occurs. We do not believe that, after the impasse, with a sharply controverted legal question as to statutory obligations remaining unsettled, either party was bound to wait until the other took physical action, or until a strike or lockout was actually instituted. The courts are not powerless to adjudicate the rights of parties, where it is obvious that there is an actual controversy which can be judicially determined and to settle which will prevent multiplicity of suits and continued dissention and prevent defeat of the beneficent purposes of the Railway Labor Act.

The judgment is reversed.

SCHNACKENBERG, *Circuit Judge*. I must dissent.

On November 4, 1953, plaintiffs, who are common carriers engaged in interstate commerce by railroad, filed in the District Court a complaint for declaratory judgment,[1] which was, by leave of court, amended on January 15, 1954. On January 20, 1954, the defendants, who are the collective bargaining representatives under the Railway Labor Act,[2] of certain classes of employees of the plaintiffs, filed a motion to dismiss the complaint, as amended, alleging as grounds therefor that the court lacked jurisdiction over the subject matter of the complaint, and that

1. 28 U.S.C.A. § 2201.
2. 45 U.S.C.A. §§ 151 *et seq.*

the complaint fails to state a claim against defendants upon which relief could be granted. On February 4, 1954, the District Court sustained this motion, on the ground that no justiciable controversy requiring or admitting of a declaratory judgment had been presented. Accordingly, the court on April 15, 1954, dismissed the action. Plaintiffs appealed to this court.

According to the complaint, as amended, the action involves the interpretation and application of the Railway Labor Act, as amended. It is a class suit as to the defendants, who represent about a million employees of the plaintiffs.

The facts set forth in the complaint, as amended, insofar as they are material here, are now recited.

Pursuant to the provisions of the Railway Labor Act, each of the plaintiffs has heretofore entered into agreements with defendants concerning rates of pay, rules and working conditions. On or about May 22, 1953, each of the defendants gave a thirty-day written notice to the respective plaintiffs of the desire of each defendant to revise and supplement all existing agreements in accordance with accompanying proposals. The notices stated that each defendant had joined with other organizations serving a like notice upon the plaintiffs in the creation of an Employes' National Conference Committee, and that, in the event an agreement was not reached in separate system conferences, the defendant organizations requested each plaintiff to join with other plaintiffs in the creation of a Carriers' National Conference Committee to negotiate said proposals to a conclusion in accordance with the procedures of the Railway Labor Act.

Said proposals were that the existing agreements be amended to provide for changes "concerning rates of pay, rules, or working conditions, under the captions 'Vacations,' 'Holidays' and 'Premium Compensation for Sunday Service' ". There were certain additional proposals under the captions of "Health and Welfare Plan," "Rights to Free Transportation" and "Rules Applicable to Both Home Road and Foreign Road Transportation", hereinafter sometimes referred to as "group X", which the

complaint charges "do not concern rates of pay, rules, or working conditions". The proposal under the caption "Health and Welfare Plan" was to amend the existing agreements to provide life insurance for each such employee, and all hospital, medical and surgical care incident to any sickness, injury or other disability of any employee, spouse, or other dependents, all such costs to be borne in full by plaintiffs, without reduction by any compensation for sickness, injury or disability of any employee now provided by law, agreement or practice. The proposal under the caption "Rights to Free Transportation" was to amend the existing agreements to provide that free transportation should be granted to said employees both on the employer's line and on the lines of all other railroads. Under the caption "Rules Applicable to Both Home Road and Foreign Road Transportation" there was a request for an agreement extending to employees' wives and dependents the same pass and free transportation privileges, both on the employer's lines and on the lines of all other railroads.

Upon receipt of said notices each plaintiff held a conference or conferences with the organizations which had served the notices, reserving the right to confine the matters at issue to those coming under the collective bargaining provisions of the Railway Labor Act, and plaintiffs notified the defendants of certain proposals submitted by plaintiffs for changes in agreements concerning rates of pay, rules or working conditions.

Thereafter plaintiffs created, on a regional basis, Carriers' Conference Committees. The Employes' National Conference Committee and the Carriers' Conference Committees met for the first time on November 3, 1953, when plaintiffs, through their Committees, stated that they were willing to confer, treat, bargain and negotiate with respect to each of the proposals of May 22, 1953, concerning rates of pay, rules or working conditions, and the proposals of the carriers, but that the group X proposals are not proper subjects for collective bargaining under the Railway Labor Act since they do not concern rates of pay, rules or working conditions "and plaintiffs therefore * * * refused to confer, treat, bargain or negotiate" regarding group X.

Said meeting was resumed on November 4, 1953, at which time the Employes' National Conference Committee presented to plaintiffs a reply statement in which they contended that "these working conditions are properly negotiable and are disputes subject to the Railway Labor Act." They called upon the plaintiffs to negotiate upon said matters. Plaintiffs reiterated their previously expressed position, the Employes' National Conference Committee refused to bargain with plaintiffs as to the proposals of the carriers and as to any of the proposals of May 22, 1953, unless plaintiffs would agree to bargain as to group X, and the Employes' National Conference Committee thereupon walked out of and terminated the meeting. The National Mediation Board then endeavored to mediate the controversy. On December 28, 1953, it wrote to the representatives of both sides that all practical methods provided in the Railway Labor Act for its adjustment of the suit had been exhausted without effecting a settlement and the Board gave notice that its services had that day been terminated under the act. The defendants have announced that they have circulated ballots to the employees whom they represent to vote upon a proposal to call a strike or strikes with respect to all their proposals of May 22, 1953.

On December 28, 1953, the President of the United States created an emergency board to investigate and report to him with respect to the disputes between the carriers "and certain of their employees represented by the fifteen cooperating (non-operating) railway labor organizations" named as defendants herein.[1]

The complaint, as amended, alleges that it is highly desirable in the interest of the public, the plaintiffs, and their employees represented by defendants, that this controversy be resolved by the court; that a continuance of the amicable relationship of the plaintiffs and the said employees and the continuance of transportation service to the public is threatened with impairment if the legal controversy as to their statutory rights and duties is not speedily resolved by the court; that the bargaining procedure estab-

1. No report of the emergency board is in the record of the District Court as transmitted to this court.

lished by the act with respect to agreements concerning rates of pay, rules and working conditions is being interfered with and thwarted by the wrongful action of the defendants and of the employees whom they represent in insisting that the group X proposals are properly negotiable under the act and in refusing to bargain with respect to plaintiffs' proposals and the other proposals set out in the May 22, 1953 notice unless plaintiffs agree to bargain upon the above captioned proposals, all to the injury both of the plaintiffs and of the public, and in addition plaintiffs' public relations are threatened through the wrongful insistence and announcement of defendants that plaintiffs have violated their duty under the act; a substantial portion of the public may cease dealing with plaintiffs, and prospective employees may seek work elsewhere.

Plaintiffs' prayer is that the court adjudge, declare and decree (a) that the group X proposals do not affect or concern rates of pay, rules, or working conditions within the meaning of the act, (b) that they are not a proper subject matter for collective bargaining required of plaintiffs under the act, (c) that plaintiffs are subject to no legal obligation under the act or otherwise to bargain with defendants as to said proposals, and (d) grant plaintiffs general relief.

Plaintiffs, in bringing this action, rely upon the Declaratory Judgment Act (28 U.S.C.A. § 2201), which provides as follows:

> "In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

The limitation of the act to a "case of actual controversy" is required by article III of the constitution, which is to the effect that only "cases or controversies" may be decided by the federal courts. *Aetna Life Insurance Co.*

v. *Haworth, et al.*, 300 U.S. 227. In the *Aetna* case, at 240, the court said:

> "A 'controversy' in this sense must be one that is appropriate for judicial determination. *Osborn* v. *United States Bank*, 9 Wheat. 738, 819. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. *United States* v. *Alaska S.S. Co.*, 253 U.S. 113, 116. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. *South Spring Gold Co.* v. *Amador Gold Co.*, 145 U.S. 300, 301; *Fairchild* v. *Hughes*, 258 U.S. 126, 129; *Massachusetts* v. *Mellon*, 262 U.S. 447, 487, 488. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."

The question before us is whether the complaint, as amended, sets forth a justiciable controversy as so defined and limited.

Defendants have presented to the plaintiffs, pursuant to the provisions of the Railway Labor Act,[1] proposals for changes in agreements affecting rates of pay, rules, or working conditions, and plaintiffs have submitted to defendants proposals for other changes in said agreements. Conferences between the representatives of the respective parties ended because plaintiffs insisted they would not bargain upon the group X proposals, claiming that they are not within the purview of section 152 First of the act[2] which makes it the duty of all carriers and employees to exert every reasonable effort to make agreements concerning rates of pay, rules and working conditions, and section 156, which itself refers to intended changes in such agreements.

At the time that the complaint was filed in this case the efforts of the Mediation Board, acting under the act,[1] had

1. 45 U.S.C.A. § 156.
2. 45 U.S.C.A. § 152 First.
1. Ibid §§ 154, 155.

failed to change the situation and an emergency board had been appointed by the President of the United States pursuant to section 160 of the Act (45 U.S.C.A. § 160), which board had not yet made a report. However, defendants announced that they had taken steps to have the employees, whom they represented, vote upon a proposal to call a strike or strikes with respect to their proposals.

The Transportation Act of 1920[2] set up the Railroad Labor Board as a means for the peaceful settlement, by agreement or by arbitration, of labor controversies between interstate carriers and their employees. However, the decisions of the Board were supported by no legal sanction. The disputants were not in any way to be forced into compliance, except through the effect of adverse public opinion. In 1926, this act was repealed and the Railway Labor Act was enacted.[3] By the new measure, Congress continued its policy of encouraging the amicable adjustment of labor disputes by their voluntary submission to arbitration before an impartial board, but it supported that policy by the imposition of legal obligations. For instance, it provided means for enforcing the award obtained by arbitration between the parties to labor disputes. It recognized the right of the parties to designate representatives for the purposes of the Act "without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other". Under the last mentioned provision it was held in *Texas & N.O.R. Co.* v. *Brotherhood of Ry. & S.S. Clerks, et al.*, 281 U.S. 548, that the statute protected the freedom of choice of representatives, which was an essential of the statutory scheme, with a legal sanction which it was the duty of courts to enforce by appropriate decree. The prohibition against such interference was continued and made more explicit by an amendment adopted in 1934. The Railway Labor Act, as amended, added new provisions: section 2 Ninth[1] makes it the duty of the Mediation Board, when any dispute arises among the carrier's employees "as to who are the representatives of such em-

2. C. 91, 41 Stat. 456, 469.

3. 45 U. S. C. A. §§ 151 *et seq.*

1. 45 U.S.C.A. § 152.

ployees", to investigate the dispute and to certify the name of the organization authorized to represent the employees. It commands that "Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act."

After considering these statutory changes, the court, in *Virginian Ry.* v. *Federation*, 300 U.S. 515, at 545, said:

> "It is, we think, not open to doubt that Congress intended that this requirement be mandatory upon the railroad employer, and that its command, in a proper case, be enforced by the courts. The policy of the Transportation Act of encouraging voluntary adjustment of labor disputes, made manifest by those provisions of the Act which clearly contemplated the moral force of public opinion as affording its ultimate sanction, was, as we have seen, abandoned by the enactment of the Railway Labor Act. Neither the purposes of the later Act, as amended, nor its provisions when read, as they must be, in the light of our decision in the *Railway Clerks* case, *supra*, lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction."

There is no question raised in the case at bar as to the authority of the respective representatives of the employees and the carriers who entered into the conferences initiated for the purposes of considering the proposals of intended changes in the existing agreements, as provided for in the act.[2] The act specifically recognizes that intended changes may be proposed by both carriers and representatives of the employees, and provides for conferences thereon.

In the case at bar it became the duty of each side to bargain with the other in regard to proposals to change existing agreements affecting rates of pay, rules, or working conditions, submitted by either side. The performance of this duty, in a proper case, will be enforced by the courts in an action brought by either party against the other. If

2. 45 U.S.C.A. § 156.

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plaintiffs feel aggrieved by an allegedly unjustified refusal by the employees' representatives to confer and bargain with the plaintiffs in regard to the latter's requests for changes in existing agreements, the courts are open to the plaintiffs to secure enforcement of the defendants' duty in that regard. Conversely, the defendants have a right to resort to the courts for similar relief as to their proposed changes, including group X.

As to the proposed changes submitted by defendants, the complaint, as amended, avers that defendants have been insistent that they will not bargain with the plaintiffs unless group X proposals are included in the negotiations. That defendants are in earnest is indicated by their preparations for a strike vote in support of their position. However, one cannot speculate with profit as to the future course of defendants in regard to their proposals. They may never file an action in court to compel the carriers to bargain on group X proposals. If they take such action, the carriers, by way of defense, may procure from the court, in that case, a decision on the point which they now urge in the case at bar. They are not entitled to have in advance a declaratory judgment to the effect that they will have a good defense when and if that cause of action is asserted. *Public Service Commission* v. *Wycoff Co.*, 344 U.S. 237, at 248.

As to the plaintiffs' proposals for changes in existing agreements, they have a right to bring an action in court to force the defendants to bargain thereon. In such a case plaintiffs could urge and obtain a decision such as they ask in the case at bar. They cannot assure themselves of a favorable decision by a declaratory judgment in advance of filing such a suit.

We thus see that the question of who is right in the present dispute may be settled in an action brought by either party to force its adversaries to bargain upon proposals for changes in existing agreements. The declaratory judgment procedure may not be made the medium for securing an advisory opinion in such a situation. In *Public Service Commission, et al.*, v. *Wycoff Co.*, 344 U.S. 237, at 243, the court said:

> "But when all of the axioms have been exhausted and all words of definition have been spent, the propriety of declaratory relief in a particular case will depend upon a circumspect sense of its fitness informed by the teachings and experience concerning the functions and extent of federal judicial power. While the courts should not be reluctant or niggardly in granting this relief in the cases for which it was designed, they must be alert to avoid imposition upon their jurisdiction through obtaining futile or premature interventions, especially in the field of public law."

The defendants made requests for changes in existing agreements and called into play the bargaining machinery outlined by the statute.[1] Inaction developed in the operation of that machinery. The efforts of the Mediation Board failed. The Emergency Board had not yet reported as of the date of the filing of this suit. The record before us shows no steps by the defendants to strike, other than a reference to the taking of a strike vote among the employees. The question of what effect, if any, a calling of a strike would have is not before us and is not considered by me. Whatever the rights of plaintiffs may be, they have not been legally injured by defendants' insistence that bargaining must include group X. Lacking a showing of legal injury to plaintiffs' rights, they can find no support in *Aetna Life Insurance Co.* v. *Haworth, et al.*, 300 U.S. 227, for the maintenance of a declaratory judgment proceeding. In that case it was held that a declaratory judgment action was maintainable, but the court significantly pointed out (p. 239) that, while the defendants there had not instituted any action wherein the plaintiff would have an opportunity to prove the absence of the alleged disability claimed by the defendant insured, yet "plaintiff points to the danger that it may lose the benefit of evidence through disappearance, illness or death of witnesses; and meanwhile, in the absence of a judicial decision with respect to the alleged disability, the plaintiff in relation to these policies will be compelled to maintain reserves in excess of $20,000."

1. 45 U.S.C.A. § 156.

The majority relies upon a report of the Emergency Board said to have been filed on May 15, 1954, which was more than two months after the order appealed from was entered. This report is said to conclude that whether the proposals in question come within the (Railway Labor) act was not for the Board but for the courts. I feel that the correctness of the order appealed from must be judged by the record then before the trial court and cannot be based upon a subsequent report of any board, which necessarily could not have been brought to the attention of the trial court at or prior to the time when it entered the order now being reversed. While the Emergency Board has no power to determine a question of jurisdiction of the federal courts, no one denies that the dispute between the plaintiffs and the defendants can be settled by the courts in an enforcement suit brought by either party, as hereinbefore pointed out. But there is now presented to this court a matter not cognizable in a declaratory judgment proceeding.

For the reasons hereinbefore set forth, I hold that the complaint, as amended, does not present a justiciable controversy and I would affirm the judgment of the District Court.